

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, THE STATES OF CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, LOUISIANA, MASSACHUSETTS, MICHIGAN, MONTANA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA, WISCONSIN and the DISTRICT OF COLUMBIA, ex rel. DAVID MORGAN,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC.; CVS CAREMARK CORPORATION; MEDCO HEALTH SOLUTIONS INC.; FIRST DATABANK, INC.; WOLTERS KLUWER HEALTH d/b/a MEDI-SPAN; MCKESSON CORPORATION; CARDINAL HEALTH, INC.; AMERISOURCE CORPORATION; and JOHN DOE CORPORATIONS 1-20,

Defendants.

Civil No. 05-CV-1714 (DMC)

Hon. Dennis M. Cavanaugh

**NOTICE OF ELECTION TO INTERVENE IN PART AND DECLINE TO INTERVENE
IN PART BY THE STATES OF CALIFORNIA, DELAWARE, FLORIDA, GEORGIA,
ILLINOIS, INDIANA, MICHIGAN, NEVADA, NEW HAMPSHIRE, NEW JERSEY,
NEW MEXICO, NEW YORK, TENNESSEE, TEXAS and the DISTRICT OF
COLUMBIA**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4) and the California False Claims Act, Cal. Gov't Code § 12652(c), the State of California for itself, and on behalf of the States of Delaware, Florida, Georgia, Illinois, Indiana, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, New York, Tennessee, Texas and the District of Columbia (collectively, the "Fifteen Intervening States") notifies the Court of the Fifteen Intervening States' decisions

pursuant to their respective state statutes to intervene in part of this action and to decline to intervene in part of this action.

Consistent with the settlement agreements (the “Settlement Agreements”) dated on or about July 26, 2012 and executed between the Fifteen Intervening States and Defendant McKesson Corporation (“McKesson”) , the Fifteen Intervening States hereby intervene as to any and all claims asserted by the relator in this action on behalf of the Fifteen Intervening States against McKesson for engaging in the following alleged conduct (hereafter referred to as the “Covered Conduct”):

During the period from August 1, 2001, through March 31, 2005, McKesson knowingly increased, to 25% over Wholesale Acquisition Cost (“WAC”) or over Direct Price (“DP”), the markups it reported to First DataBank (“FDB”) for all brand-name, self-administered, prescription pharmaceuticals, without regard to the lower markups suggested by drug manufacturers for such drugs, and knowingly reported such 25% markups to FDB, when in fact (1) prices with such markups did not accurately reflect the prices that McKesson actually charged its customers for such drugs; (2) McKesson knew that reporting such false and inflated markups to FDB would cause FDB to publish false and inflated Average Wholesale Prices (“AWPs”) for such drugs; (3) McKesson knew that FDB described its published AWPs as being the product of wholesaler surveys and as reflecting actual prices that wholesalers charged their customers; and (4) McKesson knew that the State would and did use those published AWPs to reimburse providers for such drugs. The drugs covered by this Agreement (“the Covered Drugs”) are all brand name, self-administered, prescription pharmaceuticals for which FDB published AWPs equal to 25% over the drugs’ respective WACs or DPs. The State further contends that McKesson’s conduct caused the State, which relied on FDB’s AWPs or the AWPs published by Medi-Span which were derived from FDB’s AWPs, to pay artificially inflated reimbursements for the Covered Drugs for Medicaid claims submitted during the period from August 1, 2001, through December 31, 2009.

The Fifteen Intervening States decline to intervene in all other claims asserted by the relator in this action on their behalf against any defendant.

Consistent with the terms of the Settlement Agreements, the State of California, on behalf of the Fifteen Intervening States, is submitting concurrently herewith a Notice of Dismissal

requesting dismissal of any and all claims asserted in this action, on behalf of the Fifteen Intervening States, against McKesson for the Covered Conduct.

Although the Fifteen Intervening States hereby decline to intervene in a portion of the action, they acknowledge the statutory right of the relator to maintain the declined portion of the action on behalf of and in the name of the Fifteen Intervening States; providing, however, that the action may be dismissed only if the Court and the Attorneys General for the Fifteen Intervening States give written consent to the dismissal. Therefore, the State of California, on behalf of the Fifteen Intervening States, requests that should either the relator or any defendant propose that a part of the action in which the Fifteen Intervening States have not intervened be dismissed, settled, stayed, or otherwise discontinued, this Court solicit the written consent of the Fifteen Intervening States before ruling or granting its approval.

Furthermore, the State of California, on behalf of the Fifteen Intervening States, requests that all pleadings filed in this action, even as to the non-intervened part of this action, be served upon the Fifteen Intervening States, and that all orders issued by the Court be sent to counsel for the State of California. Each of the Fifteen Intervening States reserves its right to order any deposition transcripts and to intervene in the portion of this action in which it is declining to intervene today, for good cause, at a later date.

The undersigned counsel for the State of California has conferred with and obtained the consent of each of the Fifteen Intervening States to file this Notice on behalf of each.

A proposed order accompanies this Notice.

Dated: March 19, 2013

Respectfully submitted,

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Attorney General of California

/s/
NICHOLAS N. PAUL
Supervising Deputy Attorney General
admitted *pro hac vice*

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behalf of the States of California, Delaware,
Florida, Georgia, Illinois, Indiana,
Michigan, Nevada, New Hampshire, New
Jersey, New Mexico, New York, Tennessee,
Texas and the District of Columbia*